

*City of Lincoln  
Federal Transit Authority  
Program*

*Drug and Alcohol Testing  
Program and Policy*

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05R-171

Introduce: 7-25-05

RESOLUTION NO. A- **83473**

1 WHEREAS, the City of Lincoln desires to adopt a policy to establish guidelines to  
2 maintain a drug- and alcohol-free workplace in compliance with the Drug-Free  
3 Workplace Act of 1988 and the Omnibus Transportation Employee Testing Act of 1991;  
4 and

5 WHEREAS, the City desires to comply with all applicable Federal regulations  
6 governing workplace anti-drug and alcohol programs in the transit industry including the  
7 Federal Transit Administration (FTA) of the U.S. Department of Transportation  
8 regulations published in 49 C.F.R. § 655, as amended, that mandates urine drug testing  
9 and breath alcohol testing for safety-sensitive positions, and prohibits performance of  
10 safety-sensitive functions when there is a positive test result, and the regulations  
11 published in 49 C.R.R. § 40, as amended, that sets standards for the collection and  
12 testing of urine and breath specimens; and

13 WHEREAS, the City also intends its policy to comply with the applicable  
14 requirements of the Drug-Free Workplace Act of 1988, the Americans With Disabilities  
15 Act and the Family Medical Leave Act.

16 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of  
17 Lincoln, Nebraska:

18 That the City of Lincoln Federal Transit Authority (FTA) Drug/Alcohol Testing  
19 Program and Policy which is attached hereto as Exhibit "A" is hereby accepted and  
20 approved by the City Council of the City of Lincoln, Nebraska as the governing body of  
21 the City of Lincoln.

1 BE IT FURTHER RESOLVED that a copy of this Resolution and the Federal  
2 Transit Authority (FTA) Drug/Alcohol Testing Program and Policy attached hereto be  
3 submitted to Pat Kant in the City/County Personnel Department for notice and  
4 dissemination to all affected employees as required by the federal regulations.

Introduced by:

Jonathan Cook

Approved as to Form and Legality:

[Signature]  
City Attorney

AYES: Camp, Cook, Eschliman,  
Marvin, McRoy, Newman,  
Svoboda; NAYS: None.

Approved this <sup>4th</sup> 19 day of Aug., 2005:

[Signature]  
Mayor

**ADOPTED**

AUG 15 2005

BY CITY COUNCIL

05R-171

**8/1/05 COUNCIL PROCEEDINGS:**

Cook            Moved to continue Public Hearing & Action to 8/15/05.

                  Seconded by Marvin & carried by the following vote: AYES: Camp, Cook,  
Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

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*Federal Transit Authority (FTA)  
Drug/Alcohol Testing Program Policy*

**A. POLICY STATEMENT**

Regular text = FTA requirements.

*Italic text = City of Lincoln policy only.*

In accordance with **the City of Lincoln's** commitment for a safe workplace, the **City of Lincoln** (hereinafter called "**City**") will not hire or employ individuals who use illegal drugs or alcohol registering at defined concentration levels. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. It is recognized that use of alcohol and/or illegal drugs on and off the job eventually takes a toll on job performance and can put employees' and the public's safety at risk. The use, sale or possession of illegal narcotics, illegal drugs or controlled substances while on the job, on duty or on any City facility or property is a disqualifying or dischargeable offense.

Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U. S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

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It is the City's intention to comply fully with the DOT regulations governing drug and alcohol use and testing, and the requirements of the DOT regulations have been incorporated into this Policy. In the event DOT regulations are amended, this Policy and the applicable term(s), condition(s) and/or requirement(s) of this Policy shall be deemed to have been amended automatically at that time, without the need for redrafting, in order to reflect and be consistent with DOT regulations. In such case, the City reserves the right to apply the amended requirements immediately, and without giving prior notice to safety sensitive employees and/or applicants, unless such notice is required by DOT or another applicable law. The City reserves the right to amend the list of positions covered by this policy and the supervisory positions required to attend training without redrafting the entire policy. It is also the City's intention to comply with any applicable state requirements governing drug and/or alcohol testing which are not preempted by DOT regulations. The City also intends to comply with the applicable requirements of the Drug-Free Workplace Act of 1988, the Americans With Disabilities Act and the Family and Medical Leave Act.

For purposes of this Policy and the City's drug and alcohol testing program, performing a "safety-sensitive function" means operation of a revenue service vehicle (whether or not the vehicle is in revenue service). Maintenance of a revenue service vehicle or equipment used in revenue service, dispatchers or person controlling the movement of revenue service vehicles and any other transit employee who is required to hold a Commercial Drivers License (CDL). Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions who perform one or more of the above mentioned duties is provided in Appendix I.

Any job applicant applying for a position who refuses or fails a pre-employment drug test will not be hired for that position. Any employee covered by this policy who refuses or fails a drug and/or alcohol test will immediately be removed from performing safety sensitive duties.

It is understood that a policy cannot address every situation that may arise, and in those situations which are not covered in this policy, each shall be handled on its individual merits by the Plan Administrator.

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**B. DRUG/ALCOHOL TESTING PROCEDURES**

The Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing of safety-sensitive employees in the aviation, motor carrier, railroad and mass transit industries. The Federal Transit Authority (FTA) requires alcohol and drug testing of employees who perform a safety sensitive function.

For purposes of this Policy and the City's drug and alcohol testing program, performing a "safety-sensitive function" means any of the following for positions covered by Federal Transit Authority (FTA): Means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors: (1) Operating a revenue service vehicle, including when not in revenue service; (2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License; (3) Controlling dispatch or movement of a revenue service vehicle; (4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. 5307 or 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. 5311 and contracts out such services; (5) Carrying a firearm for security purposes.

In addition, any employee contracted by the **City** filling any safety sensitive position, will be covered by and is expected to maintain a drug testing policy in accordance with federal regulations to continue this contractor relationship. The contractor must permit access to property and records by the **City**, the D.O.T. and any jurisdictional state agency for the purpose of monitoring compliance.

Temporary safety sensitive employees who are contracted by the **City** and who participate in the drug and alcohol testing program of that other company, need not be subject to drug testing by the **City**. However, the other company must certify that the safety sensitive employee is fully qualified to drive and will provide a written statement in compliance with D.O.T. regulations.

*Covered employees in the Mayor's Department, Aging Division, Handyman Section, are subject to the terms of the contract with the Nebraska Department of Roads/Transit Systems Public Transportation Drug and Alcohol Consortium Committee and where silent the terms of the City of Lincoln FTA Drug and Alcohol Policy.*



**C. TERMS AND DEFINITIONS**

**Accident** - An occurrence associated with the operation of a revenue service vehicle even when not in revenue service or which requires a Commercial Drivers License to operate, if it results in—

- A fatality;
- An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or
- One or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, disabling damage means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

**Administrator** - The Administrator of the Federal Transit Administration or the Administrator's designee.

**Adulterated Specimen** - A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

**Air Blank** - A reading by an EBT of ambient air containing no alcohol.

**Alcohol** - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

**Alcohol Concentration** - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a evidential breath testing device.

**Alcohol Use** - The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

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**Aliquot** - A portion of a specimen used for testing.

**Blind Sample or Blind Performance Test Specimen** - A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

**Breath Alcohol Technician (BAT)** - An individual who instructs and assists individuals in the alcohol testing process and operates an Evidential Breath Testing Device (EBT).

**Canceled or Invalid Test** - In drug testing, a drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither a positive nor a negative.

**Certification** - A recipient's written statement, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part.

**Chain of Custody** - Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition. With respect to drug testing, these procedures shall require that an appropriate drug testing custody form be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory (an) appropriate chain of custody form(s) account(s) for the sample aliquots within the laboratory.

**Collection Container** - A container into which the employee urinates to provide the urine sample used for a drug test.

**Collection Site** - A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**Collection Site Person** - A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals.

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**Confirmation (or Confirmatory) Test** - In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test to ensure reliability and accuracy. (Gas chromatography/mass spectrometry [GC/MS] is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.) In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

**Consortium** - An entity, including a group or association of employers, operators, recipients, sub-recipients, or contractors, that provides drug testing as required by this part, or other DOT drug testing rule, and that acts on behalf of the employer.

**Contractor** - A person or organization that provides a service for a recipient, sub-recipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

**Covered Employee** - A person, including a volunteer, applicant, or transferee, who performs a safety-sensitive function for an entity subject to this part.

**Designated Employer Representative (DER)** - An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

**DHHS** - The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

**Dilute Specimen** - A specimen with creatinine and specific gravity values that are lower than expected for human urine.

**Disabling Damage** - Damage that prevents any of the vehicles involved from leaving the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

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**DOT Agency** - An agency of the United States Department of Transportation administering regulations related to drug or alcohol testing, including the Federal Aviation Administration, the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, the Federal Transit Administration, the Research and Special Programs Administration, and the Office of the Secretary.

**Drug Metabolite** - The specific substance produced when the human body metabolizes a given prohibited drug as it passes through the body and is excreted in urine.

**Drug Test** - The laboratory analysis of a urine specimen collected in accordance with 49 CFR part 40 and analyzed in a DHHS-approved laboratory.

**EBT or Evidential Breath Testing Device** - An device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on NHTSA's conforming products list.

**Education** - Efforts that include the display and distribution of informational materials, a community service hot-line telephone number for employee assistance, and the transit entity policy regarding drug use in the workplace.

**Employee** - An individual designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. As used in this part, "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part.

**Employee Assistance Program (EAP)** - A program provided directly by an employer, or through a contracted service provider, to assist employees in dealing with drug or alcohol dependency and other personal problems. Rehabilitation and reentry to the work force are usually arranged through an EAP.

**Employer** - A recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes sub-recipients, operators, and contractors.

**FTA** - Federal Transit Administration

**Initial Test (also known as Screening Test)** - An immunoassay screen to eliminate "negative" urine specimens from further consideration.

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**Large Operator** - A recipient or sub-recipient primarily operating in an area of 200,000 or more in population.

**Medical Review Officer (MRO)** - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results, together with his/her medical history, and any other relevant bio-medical information.

**Negative test result** - A drug test means a verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended. An alcohol concentration of less than 0.02 BAC is a negative test result.

**Operator** - A transit entity that is a recipient, directly or indirectly, of Federal funds under Section 3, 9, or 18 of the UMT Act of 1964, as amended, or is a recipient of Federal assistance under Section 103(e)(4) of Title 23 of the United States Code.

**Pass a Drug Test** - An individual passes a drug test when a Medical Review Officer determines, in accordance with procedures in 49 CFR part 40, that the results of the test:

- Showed no evidence or insufficient evidence of prohibited drug or drug metabolite
- Showed evidence of a prohibited drug or drug metabolite for which there was a legitimate medical explanation
- Were scientifically insufficient to warrant further action
- Were suspect because of irregularities in the administration of the test, or observation, or custody and control procedures.

**Performing a Safety-Sensitive Function** - A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

**Probationary Employee** - An employee who has not completed his or her probationary period after original employment. The probationary period is a working test period during which an employee, newly appointed from a list, is required to demonstrate his or her fitness for a position to which said employee is appointed by actual performance of the duties of the position. The probationary period shall not exceed six months.

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**Permanent Record Book** - A permanently bound book in which identifying data on each specimen collected at a collection site are permanently recorded in the sequence of collection. May be used in conjunction with a modified urine custody and control form to document collection.

**Positive test result** - For a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended. A positive alcohol test result means a confirmed alcohol concentration of 0.04 BAC or greater.

**Post-Accident Test** - A drug test administered to an employee when an accident (as previously defined) has occurred and the employee performed a safety-sensitive function that either contributed to the accident, or cannot be completely discounted as a contributing factor in the accident.

**Pre-Employment Test** - A drug test given to an applicant or employee who is being considered for a safety-sensitive position. The applicant or employee must be informed of the purpose for the urine collection prior to actual collection.

**Prohibited Drug** - Marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

**Protocol** - A procedure requiring strict adherence to achieve scientifically valid test results from specimen collection and laboratory testing of urine specimens.

**Qualified Laboratory** - A laboratory certified by the DHHS to conduct urine drug testing and which permits unannounced inspections by the recipient, operator, or FTA Administrator.

**Random Test** - A drug test annually to a predetermined percentage of employees who perform in safety-sensitive functions and who are selected on a scientifically defensible random and unannounced basis.

**Reason to Believe** - Objective information indicating that a particular individual may alter or substitute a urine specimen.

**Reasonable Suspicion Test** - A drug test given to a current employee who performs in a safety-sensitive position and who is reasonably suspected by at least one trained supervisor of using a prohibited drug or misuse of alcohol.

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**Recipient** - An entity receiving Federal financial assistance under 49 U. S. C. 5307, 5309, or 5311; or under 23 U. S. C. 103(e)(4).

**Refuse to Submit** - The following are considered a refusal to test if the employee:

- Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer;
- Fails to remain at the testing site until the testing process is complete;
- Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations;
- In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen;
- Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation of the failure;
- Fails or declines to take a second test the employer or collector has directed you to take;
- Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the shy bladder or shy lung procedures;
- Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process);
- If the MRO reports that there is verified adulterated or substituted test result;
- Failure or refusal to sign Step 2 of the alcohol testing form;

**Regular Employee** - An employee who has been appointed to a position in the classified service in accordance with Lincoln Municipal Code after successful completion of a probationary period.

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**Return to Duty Test** - An initial drug and alcohol test prior to return to duty given to employees performing in safety-sensitive functions who previously tested positive, refused to test or provided an adulterated/substituted sample to a drug test and are returning to safety-sensitive positions.

**Revenue Service Vehicle** - A vehicle used to transport passengers, including a bus, van, car, railcar, locomotive, trolley car, trolley bus, ferry boat, or a vehicle used on a fixed guideway or inclined plane.

**Safety-Sensitive Function** - Any of the following duties:

- Operation of a transit revenue service vehicle even when the vehicle is not in revenue service;
- Operating of a non-revenue service vehicle, by an employee when the operation of such a vehicle requires the driver to hold a Commercial Driver's License (CDL);
- Controlling dispatch or movement of a revenue service vehicle;
- Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives section 5311 funding and contracts out such services. In addition, recipients of Federal transit funds under 49 U.S.C. 5307 and 5309 in an area less than 200,000 in population and which contract out such services are no longer required to comply with Part 655. Also maintenance providers of safety-sensitive functions for a grantee on an ad hoc or one-time basis are not required to comply.
- Carrying a firearm for security purposes.

**SAMHSA** - Substance Abuse Mental Health Services Administration.

**Safety-Sensitive Position** - A duty position or job category that requires the performance of a safety-sensitive function(s).

**Screening Test (or initial test)** - In drug testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.



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**Secretary** - The Secretary of Transportation or the Secretary's designee. The Secretary's designee may be a contractor or other recognized organization that acts on behalf of the Secretary in implementing the DOT and FTA drug use control regulations.

**Shipping Container** - A container capable of being secured with a tamper-evident seal that is used to transfer one or more urine specimen bottle(s) and associated documentation from the collection site to the laboratory.

**Small Operator** - A recipient or subrecipient primarily operating in an area of less than 200,000 in population.

**Specimen Bottle** - The bottle that, after being labeled and sealed, is used to transmit a urine sample to the laboratory.

**Split Specimen** - An additional specimen collected with the original specimen, to be tested in the event the original specimen tests positive.

**Substance Abuse Professional (SAP)** - A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug- and alcohol-related disorders.

**Substituted Specimen** - To replace one's urine with another's or with a different substance. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

**Temporary Employee** - An employee appointed to a non-career service position in the unclassified service, or appointed to a career service position for a specific purpose and limited length of time not to exceed one year.

**Training** - Providing information about the effects and consequences of drug use on personal health, safety, and the work environment; about the work environment; and about the manifestations and behavioral cues that may indicate drug use and abuse.

**Vehicle** - A bus, electric bus, van, automobile, railcar, trolley car, trolley bus, or vessel. A "mass transit vehicle" is a vehicle used for mass transportation.

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**Verified Negative (drug test result)** - A drug test result reviewed by a Medical Review Officer and determined to have *no* evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

**Verified Positive (drug test result)** - A drug test result reviewed by a Medical Review Officer and determined to *have* evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

**Violation Rate** - The number of covered employees found during random tests to have an alcohol concentration of 0.04 or greater, plus the number of employees who refuse a random test required, divided by the total reported number of employees in the industry given random alcohol tests plus the total reported number of employees in the industry who refuse a random test.

**Volunteer** - Is deemed a covered employer when he or she receives remuneration in excess of their actual personal expenses incurred while performing the volunteer service.

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**D. EDUCATION AND TRAINING**

All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators or probable alcohol misuse. Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in the appendix.

A list of supervisory positions covered by this policy is found in appendix II.

Every covered employee will receive a copy of this policy and is listed on the City of Lincoln's web site under Personnel Department and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

Information on the signs, symptoms, health effects and consequences of alcohol misuse is presented in appendix III of this policy.

Applicants are required to execute a certification regarding requirements of the City Drug Testing Program as a condition of being hired. An applicant who refuses to do so will not be hired.

All drug and alcohol testing and training will be paid City time.

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**E. PROHIBITED SUBSTANCES**

Prohibited substances addressed by this policy include the following:

- (1) This includes: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U. S. Drug Enforcement Administration or the U. S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, as which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all covered employees be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in this policy. Illegal use of these five drugs is prohibited at all times, and thus covered employees may be tested for these drugs anytime that they are on duty.

- (2) Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicated that mental functioning, motor skills, or judgment may be adversely affected must be reported to your supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.
- (3) Alcohol: The use of beverages containing alcohol (including any mouthwash, prescribed or non-prescribed medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions.

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**F. PROHIBITED CONDUCT**

- (1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.
- (2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline.
- (3) The department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.
- (4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.
- (5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- (6) No covered employee shall consume alcohol within four (4) hours to the performance of safety-sensitive job functions.
- (7) Consistent with the Drug-Free Workplace Act of 1988, all safety-sensitive employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including Transit Department premises, transit vehicles, while on company business.

**G. DRUG STATUTE CONVICTION**

Consistent with the Drug Free Workplace Act of 1988, all employees are required to notify the transit management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

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**H. TESTING REQUIREMENTS**

Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR part 40 as amended. All covered employees shall be subject to testing prior to employment, for random, following an accident and for reasonable suspicion as defined in Section K, L, M and N of this policy. All covered employees who have tested positive for drugs or alcohol on a random, reasonable suspicion, or post-accident will be tested prior to returning to duty after completion of the Substance Abuse Professionals recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

Under the City's authority, an alcohol test can be performed any time a covered employee is on duty.

If the MRO informs that a positive drug test was dilute, the test will be treated as a verified positive test.

If the MRO informs that a negative test was dilute, employee will immediately be scheduled for a recollection.

In all cases, one previous dilute will trigger that the employee's supervisor accompany the employee to the testing site for all future tests. The supervisor is to make sure the employee does not drink large amounts of liquids before the drug collection and can be observed by the supervisor at all times until the employee enters the collection site.

All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy. Any covered employee who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of the above listed actions will be considered a test refusal and will result in the removal from duty and disciplined as defined in Section Q of this policy.

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## **I. DRUG TESTING PROCEDURES**

Upon notification that a drug and/or alcohol test is required, an employee will report immediately to the collection site. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U. S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result. Drug testing will be performed utilizing split urine sample collections.

The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. The levels are as follows:

|              | Initial    | Confirmation | Split Sample Retest     |
|--------------|------------|--------------|-------------------------|
| Marijuana    | 50 ng/ml   | 15 ng/ml     | Any detectible presence |
| Cocaine      | 300 ng/ml  | 150 ng/ml    | Any detectible presence |
| Opiates      | 2000 ng/ml | 2000 ng/ml   | Any detectible presence |
| PCP          | 25 ng/ml   | 25 ng/ml     | Any detectible presence |
| Amphetamines | 1000 ng/ml | 500 ng/ml    | Any detectible presence |

NOTE: For Opiates, laboratories test for 6-acetylmorphine (6-AM) in all specimens with a morphine concentration equal to or greater than 2000 ng/mL.

After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

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The test results from the HHS certified laboratory will be reported to a Medical Review Officer (MRO). An MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a laboratory confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the employer Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM and no further action will be taken. If the test is invalid without a medical explanation, a retest will be conducted under direct observation.

Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice or the original sample verified test result. Request after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, however the City will seek reimbursement for the split sample test from the employee.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, or if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled and will direct the City to retest the employee under direct observation.



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The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year.

Observed collections:

Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

- (1) The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the City that there was not an adequate medical explanation for the result; or
- (2) The MRO reports to the City that the original positive, adulterated, or substituted test result had to be canceled because the test of the split specimen could not be performed.
- (3) The collector observes materials brought to the collection site or the employees conduct clearly indicates an attempt to tamper with a specimen or
- (4) The temperature on the original specimen was out of range.

In addition, the City may direct a collection under direct observation of an employee if the drug test is a return-to-duty or a follow-up test.

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**J. ALCOHOL TESTING PROCEDURES**

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device which is also approved by NHTSA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol test form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

In the event that the safety sensitive employee provides an adequate breath specimen and the initial test registers an alcohol concentration level that is less than 0.02, the test result will be reported as a "negative" and no additional test will be required at that time.

An employee who has a confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty until employee's alcohol concentration measures less than 0.02 or the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

The transit department affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a canceled test.

The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing.

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**K. PRE-EMPLOYMENT TESTING**

All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function. Pre-employment alcohol tests are not required under federal regulations.

- (1) All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a covered position unless the applicant takes a drug test with verified negative result.
- (2) A non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test with verified negative results.
- (3) The designated employee representative will provide the necessary forms to the hiring supervisor to complete the drug testing process with the certificate of eligibles. The supervisor will arrange an appointment with the collection site for the applicant and inform the designated employee representative. The supervisor will provide to the applicant a form to give to the collection site and an information sheet describing testing procedures. The designated employee representative will notify the hiring supervisor regarding the test results.
- (4) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be referred to a substance abuse professional. *Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least two years.* Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 CFR Part 40 as amended and a negative pre-employment drug test will be required prior to further consideration for employment. The cost of the assessment and any subsequent treatment will be the sole responsibility of the applicant.

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- (5) If an applicant who was previously employed by the City and terminated due to non-compliance of the drug and alcohol policy are not eligible for re-employment for a period of at least two years. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 CFR Part 40 as amended and a negative pre-employment drug test will be required prior to further consideration for employment. The cost of the assessment and any subsequent treatment will be the sole responsibility of the applicant. The employee will be subject to termination upon any other failed drug or alcohol test from the time of re-employment.
- (6) When an employee being placed, transferred, or promoted from a non-covered position to a covered position submits a drug test with a verified positive result, the employee shall be referred to a Substance Abuse Professional, and will subject to disciplinary action in accordance with Section Q of this policy.
- (7) If a pre-employment test is canceled, the City will require the applicant to take and pass another pre-employment test.
- (8) Supervisors are required to check the applicants past drug testing results for all previous DOT covered jobs in the last 2 years where the applicant held a safety sensitive position. Contact the designated employee representative to coordinate this investigation. The designated employee representative will notify the hiring supervisor regarding the results of this inquiry and advise if the individual is eligible for employment.
- (9) In instances where a covered employee is on extended leave for a period of 90 days or more regardless of reason, and the employee has not been in the random testing pool, the employee will be required to take a drug test under 49 CFR Part 655 and have negative test result prior to the conduct of safety-sensitive job functions.
- (10) An applicant with a dilute negative test result will be required to retest.
- (11) *Applicants are required to report previous DOT covered employer drug and alcohol test results-Failure to do so will result in the employment offer being rescinded.*

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**L. RANDOM TESTING**

All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

- (1) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year. Random testing must be conducted at all times of the day when safety-sensitive functions are performed.
- (2) Independent contractors are not covered by this policy. The independent contractors would be required to provide certification their company has a drug and alcohol testing policy in place.
- (3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The current random testing rate for drugs established by FTA equals fifty percent of the number of covered employees in the pool and the random testing rate for alcohol established by FTA equals ten percent of the number of covered employees in the pool.
- (4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal change of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection of the individuals who are to be tested.
- (5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of employees that are included solely under the City's authority.
- (6) Random tests can be conducted at any time during an employee's shift for drug testing. A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions or just after the employee has ceased performing such functions.

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- (7) Employees are required to proceed immediately after notification of their random selection to the collection site.
- (8) An employee with a dilute negative drug test result will be required to retest.
- (9) There is no discretion by management or operations on who is selected for testing.

The designated employee representative will officially notify the employee's supervisor of all positive drug and/or alcohol test result.

Following a positive drug test result, the supervisor should confidentially contact the employee and assign work not involving a safety sensitive function until his/her pre-disciplinary meeting. If the employee notifies the supervisor before the designated employee representative calls, accept the information and assign the employee to work not requiring a safety sensitive function and call the current Drug Test Administrator or appointed authority.

A pre-disciplinary meeting will be arranged as soon as possible. The employee should be advised by the supervisor the purpose of the meeting and that he/she is entitled to have union representation present. If the employee is alleged to have violated the, City's Drug and Alcohol policy the employee will be advised of the requirement to:

- (1) Go to Continuum Employee Assistance Program for evaluation and to set up a rehabilitation/treatment plan (the employee will be required to sign an acknowledgment of this plan), with the Substance Abuse Professional (SAP).
- (2) The employee will give the current Drug Test Administrator or appointed authority a check for the cost of the drug and/or alcohol test made payable to the third party administrator to cover the expense of the return to duty test.
- (3) Upon recommendation of the SAP, pass the "return to duty" drug and/or alcohol test. Note: a positive test result will be cause for termination with the City.
- (4) Be subject to follow-up testing. Note: a positive test result will be cause for termination with the City.

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- (5) The employee will be required to sign EAP release forms.
- (6) Be subject to disciplinary action for violation of the drug and alcohol policy.

The designated employee representative will contact the supervisor when the employee has passed the return to duty test, to set the date the employee can return to work.

Leave Policy: At the conclusion of any disciplinary suspension the employee will request vacation and personal holiday, and at the expiration of his/her vacation, request leave without pay until such time that he/she is released to return to work following a negative drug and/or alcohol test. Should he/she be required to undergo inpatient substance abuse treatment, he/she will be allowed to utilize accrued sick leave until the completion of inpatient treatment.

Release forms: The employee will be required to sign release of information forms by Continuum Employee Assistance Program to specified individuals with the City of Lincoln and third party administrator.

**M. POST-ACCIDENT TESTING**

All covered employees will be required to undergo urine and breath testing if they are involved in an accident with a transit revenue service vehicle regardless of whether or not the vehicle is in revenue service that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance cannot be completely discounted as a contributing factor to the accident.

In addition, a post-accident test will be conducted if an accident results in injuries requiring medical treatment away for the scene; or one or more vehicles incurs disabling damage, unless the operators performance can be completely discounted as a contributing factor to the accident.

- (1) As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision. The supervisor is required to complete a FTA Post Accident Documentation Form.

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- (2) The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and within 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor must prepare and maintain a record on a Post Accident Documentation for stating the reason(s) for the delay and forward to the designated employee representative. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hour, attempts to conduct the test must cease and the reasons for the failure to test documented and forward to the designated employee representative.
- (3) Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.
- (4) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
- (5) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit and employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
- (6) In the rare event that a safety sensitive employee is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency, the City may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.



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- (7) A safety sensitive employee who is required to take a post-accident drug test will be considered by the City as unqualified to work and relieved from duty pending the results of his/her test. A safety sensitive employee may request vacation or personal holiday and at the expiration of vacation, request leave without pay for the time the employee is relieved from duty. A safety sensitive employee whose test results are negative, will be reimbursed for the time. A safety sensitive employee whose test results are positive will not be reimbursed for the time. If the employee is injured, the employee will be placed on injury leave. In accordance with State Worker's Compensation laws, employees who are injured and have a positive drug test or an alcohol test are not entitled to injury leave or other worker's compensation benefits.
- (8) In addition to the penalties imposed by DOT, a safety sensitive employee who tests positive for drugs and/or alcohol, who refuses or fails to submit to a post-accident drug and alcohol test as required, who unnecessarily delays reporting to the test site following an accident, or who otherwise fails to comply with the City's post-accident testing procedures, will be subject to disciplinary action, up to and including termination.

Disqualification:

Disqualification for refusal. A driver shall be disqualified by issuance of a letter of disqualification by the State of Nebraska for a period of one year following a refusal to give a urine sample when the safety sensitive employee has been involved in a fatal accident.

- (1) Disqualification for use of controlled substances. A driver shall be disqualified by issuance of a letter of disqualification by the State of Nebraska for a period of 1 year for a positive test of controlled substance use when the safety sensitive employee has been involved in a fatal accident.
- (2) In addition to the above requirements of disqualification, any employee refusing to submit to a urine sample shall be cause for discipline up to and including immediate dismissal.

Following the test, the supervisor should drive the employee home from the test site or work site, or contact a family member to take the employee home.

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The designated employee representative will officially notify the employee's supervisor of the drug test results.

Following a positive drug result, a pre-disciplinary meeting will be arranged as soon as possible with the supervisor. The employee, who is off duty at home, should be advised by the supervisor the purpose of the meeting and that he/she is entitled to have union representation present.

The employee will be advised of the requirement to:

1. Go to Continuum Employee Assistance Program for evaluation and to set up a rehabilitation/treatment plan (the employee will be required to sign an acknowledgment of this plan), with the Substance Abuse Professional (SAP).
2. The employee will give the current Drug Test Administrator or appointed authority a check for the cost of the drug and alcohol test made payable to the third party administrator to cover the expense of the return to duty test.
3. Upon recommendation of the SAP, pass the "return to duty" drug and alcohol test. Note: a positive test result will be cause for termination with the City.
4. Be subject to follow-up testing. Note: a positive test result will be cause for termination with the City.
5. The employee will be required to sign EAP release forms.
6. Be subject to disciplinary action for violation of the drug and alcohol policy.

The designated employee representative will contact the employee and the supervisor when the employee has passed the return to duty test, to set the date the employee can return to work.

The employee will give the current Drug Test Administrator or appointed authority a check for the cost of the drug and alcohol test made payable to the third party administrator to cover the expense of the return to duty test.

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Leave Policy: At the conclusion of and disciplinary suspension the employee will request vacation and/or personal holiday, and at the expiration of his/her vacation, request leave without pay until such time that he/she is released to return to work following a negative drug/alcohol test. Should he/she be required to undergo inpatient substance abuse treatment, he/she will be allowed to utilize accrued sick leave until the completion of inpatient treatment.

Release forms: The employee will be required to sign release of information forms by Continuum Employee Assistance Program to specified individuals with the City of Lincoln and third party administrator.

**N. REASONABLE SUSPICION TESTING**

All safety sensitive covered employees will be subject to a reasonable suspicion drug and alcohol test when there are reasons to believe that the covered employee has used prohibited drug and/or engaged in alcohol misuse. An employer's determination that reasonable suspicion shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the covered employee. Reasonable suspicion referrals must be made by one supervisor who is trained to detect the signs and symptoms of drug use and alcohol misuse must make the required observations. The supervisor is required to complete a Reasonable Cause Observation Checklist, and then forward to the designated employee representative. Failure on the part of the supervisor(s) to accurately document the specified behavior for reasonable suspicion will be subject to disciplinary action up to and including termination. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. *However, under the City's authority, a reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.*

The supervisor shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.

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A written record of the observations which led to a drug and alcohol test based on reasonable suspicion shall be prepared and signed by at least one trained supervisor making the observation on a Reasonable Suspicion Observation Checklist (see Appendix). This written record shall be submitted to the Designated Employer Representative in the Personnel Department and shall be attached to the forms reporting the test results.

When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred to the SAP for an assessment. The City shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy. Testing in this circumstance would be performed under the direct authority of the City. Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority. However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.

*The City will also attempt to contact the safety sensitive employee's spouse, another member of the family, or another person designated by the safety sensitive employee, in order to make arrangements for transporting the safety sensitive employee to his/her home after the test is completed. In the event that the City is unable to contact the safety sensitive employee's spouse, family member or another designated person, the City will make arrangements for transporting the safety sensitive employee home.*

If the safety sensitive employee rejects the City's efforts in this regard and instead insists on driving his/her personal vehicle, the City reserves the right to take whatever means are appropriate to prevent this, including contacting appropriate law enforcement, or the designated employee representative and imposing disciplinary action, up to and including termination.

A safety sensitive employee who is required to take a reasonable suspicion drug test will be considered by the City as unqualified to work and removed from safety-sensitive duties pending the results of his/her drug and alcohol test. A safety sensitive employee may request vacation or personal holiday and at the expiration of vacation, request leave without pay for the time the employee is relieved from duty. A safety sensitive employee whose test results are negative will be reimbursed for the time. A safety sensitive employee whose test results are positive will not be reimbursed for the time. The employee is not eligible to use sick leave while he/she is relieved from duty, awaiting test results.

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Following a positive drug and/or alcohol test result, a pre-disciplinary meeting will be arranged as soon as possible by the supervisor. The employee, who is off duty at home, should be advised by the supervisor the purpose of the meeting and that he/she is entitled to have union representation present. The employee will be advised of the requirement to:

1. Go to Continuum Employee Assistance Program for evaluation and to set up a rehabilitation/treatment plan (the employee will be required to sign an acknowledgment of this plan), with the Substance Abuse Professional (SAP).
2. The employee will give the current Drug Test Administrator or appointed authority a check for the cost of the drug and/or alcohol test made payable to the third party administrator to cover the expense of the return to duty test.
3. Upon recommendation of the SAP, pass the return to duty drug and/or alcohol test. Note: a positive test result will be cause for termination with the City.
4. Be subject to follow-up testing. Note: a positive test result will be cause for termination with the City.
5. The employee will be required to sign EAP release forms.
6. Be subject to disciplinary action for violation of the drug and alcohol policy.

In addition to the penalties imposed by DOT, a safety sensitive employee whose reasonable suspicion test is positive, or who fails or refuses to submit to a reasonable suspicion test when directed to do so by the City, will be subject to disciplinary action, up to and including termination. An employee with a dilute negative test result will be required to retest.

The designated employee representative will contact the supervisor when the employee has passed the return to duty drug and/or alcohol test, to set the date the employee can return to work.

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Leave Policy: At the conclusion of any disciplinary suspension the employee will request vacation and/or personal holiday, and at the expiration of his/her vacation, request leave without pay until such time that he/she is released to return to work following a negative drug/alcohol test. Should he/she be required to undergo inpatient substance abuse treatment, he/she will be allowed to utilize accrued sick leave until the completion of inpatient treatment.

Release forms: The employee will be required to sign release of information forms by Continuum Employee Assistance Program to specified individuals with the City of Lincoln and third party administrator.

**O. RETURN TO DUTY TESTING**

All covered employees who previously tested positive on a drug and/or alcohol test or refused a test, must test negative for drugs, and alcohol (below 0.02 for alcohol), and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug and/or alcohol test a Return-to-Duty drug and/or alcohol test is required. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol free and there is no undo concerns for public safety. An employee who fails a return to duty test will be subject to termination. An employee with a dilute negative test result will be required to retest.

When the employee is ready to take the return to duty and/or alcohol drug test the individual will call the current Drug Test Administrator or appointed authority to arrange the appointment with the collection service. The designated employee representative will then talk to the Substance Abuse Professional to verify that the individual is in compliance with the policy. The employee will write a check payable to third party administrator in the amount of the cost of the drug and alcohol test and take it to the current Drug Test Administrator or appointed authority.

The designated employee representative will give the employee an appointment form to take to the collection site. The designated employee representative will call the supervisor after notification of the passed test and determine when and where the employee should report to work. An employee with a dilute negative test result will be required to retest.

The designated employee representative will officially notify the employee's supervisor and the employee of a failed drug test.

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A pre-disciplinary meeting will be arranged as soon as possible with the department head to discuss disciplinary action up to and including termination of the individual from City employment. The employee should be advised by the supervisor the purpose of the meeting and that he/she is entitled to have union representation present.

The employee will report to the meeting where he/she will discuss possible termination from his/her City position. The employee will be advised about resources to treat substance abuse.

**P. FOLLOW-UP TESTING**

Covered employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing. An employee with a dilute negative test result will be required to retest. An employee who fails a follow up drug and/or alcohol test is subject to termination.

Following a positive drug and/or alcohol test result, the supervisor should confidentially contact the employee and assign work not involving a safety sensitive function until his/her pre-disciplinary meeting. If the employee notifies the supervisor before the designated employee representative calls, accept the information and assign the employee to work not requiring a safety sensitive function and call the current Drug Testing Administrator or Designated Employer Representative (DER).

A pre-disciplinary meeting will be arranged as soon as possible to discuss disciplinary action up to and including termination of the individual from City employment. The employee should be advised by the supervisor the purpose of the meeting and that he/she is entitled to have union representation present.

The employee will report to the meeting where he/she will discuss possible termination from his/her City position. The employee will be advised about resources to treat substance abuse.

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**Q.    RESULT OF DRUG/ALCOHOL TEST**

Any covered employee that has a verified positive drug or alcohol test will be immediately removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP.

A positive drug and/or alcohol test will also result in disciplinary action as specified herein.

- (1) Immediately after receiving notice of a verified positive drug test result, a confirmed alcohol test result; or a test refusal, the City's Drug and Alcohol Program Manager or Designated Employee Representative will contact the employee's supervisor to have the employee cease performing any safety-sensitive function.
- (2) The employee shall be referred to a Substance Abuse Professional (SAP) for an assessment. The SAP will evaluate each employee to determine what assistance, the employee needs in resolving problems associated with prohibited drug use and/or alcohol misuse.
- (3) Refusal to submit to a drug and/or alcohol test carries the same consequences as a positive test result, but it is considered and reported as a refusal test and is a direct act of insubordination and could result in termination. A test refusal includes the following circumstances.
  - (a) A covered employee who consumes alcohol within eight (8) hours following involvement in an accident without first having submitted to post-accident drug/alcohol tests.
  - (b) A covered employee who leaves the scene of an accident without a legitimate explanation prior to submission to drug/alcohol tests.
  - (c) A covered employee who is suspected of providing false information in connection with a drug test.
  - (d) A covered employee who provides an insufficient volume of urine specimen or breath sample without a valid medical explanation. The medical evaluation shall take place within 5 days of the initial test attempt.



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- (e) A verbal or written declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test within the specified time frame.
  - (f) A covered employee whose urine sample has been verified by the MRO as substitute or adulterated.
  - (g) A covered employee fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer.
  - (h) A covered employee fails to remain at the testing site until the testing process is complete;
  - (i) A covered employee fails to provide a urine specimen for any drug test required by Part 40 of DOT agency regulations.
  - (j) A covered employee fails to permit the observation of monitoring of a specimen collection.
  - (k) A covered employee fails or declines to take a second test the employer or collector has directed you to take.
  - (l) A covered employee fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the shy bladder or shy lung procedures.
  - (m) A covered employee fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).
  - (n) Failure to sign Step 2 of the Alcohol Testing form.
- (4) For the first instance of a verified positive test from a sample submitted as the result of a random, drug/alcohol test ( $>0.04$  BAC), the employee will be advised of:

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- (a) Go to Continuum Employee Assistance Program for evaluation and to set up a rehabilitation/treatment plan (the employee will be required to sign an acknowledgment of this plan), with the Substance Abuse Professional (SAP).
  - (b) The employee will give the current Drug Test Administrator or appointed authority a check for the cost of the drug and alcohol test made payable to the third party administrator to cover the expense of the return to duty test.
  - (c) Upon recommendation of the SAP, pass the return to duty drug and/or alcohol test. Note: a positive test result will be cause for termination with the City.
  - (d) Be subject to follow-up testing. Note: a positive test result will be cause for termination with the City.
  - (e) The employee will be required to sign EAP release forms.
  - (f) Be subject to disciplinary action for violation of the drug and alcohol policy.
  - (g) Mandatory referral to Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;
- (5) The second instance of a verified positive drug and/or alcohol (> or equal to 0.04 BAC) test including a refusal to test because of an adulterated or substituted sample result submitted under the random, reasonable suspicion, post-accident, return-to-duty, or follow-up drug/alcohol test provisions herein shall be subject to termination from City employment.

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- (6) An alcohol test result of 0.02 to 0.039 BAC shall result in the removal of the employee from duty for eight hours or the remainder of the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty until (1) The employee's alcohol concentration measures less than 0.02; or (2) The start of the employee's next regular scheduled duty period, but not less than eight hours following administration of the test. *If the employee has an alcohol test result of 0.02 to 0.039 two or more times within a six month period, the employee will be removed from duty and referred to the SAP for assessment and treatment consistent with this policy.*
- (7) The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. The employee will be permitted to take accrued sick leave or administrative leave to participate in the SAP prescribed inpatient treatment program. If the employee has insufficient accrued leave, the employee shall be placed on leave without pay until the SAP has determined that the employee has successfully completed the required treatment program and released him/her to return-to-duty. Any leave taken, may be considered leave taken under the Family and Medical Leave Act.
- (8) In the instance of a self-referral or a management referral, for substance abuse, the following conditions of employment apply:
  - (1) Mandatory referral to a Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;
  - (2) Failure to execute, or remain compliant with the return-to-work agreement, the employee is subject to termination from City employment.
    - \* Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in this policy.

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- (3) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall be subject to termination;
- (4) *A self-referral or management referral to the SAP that was not precipitated by a positive test result does not constitute a violation of the Federal regulations. However, employee is subject to the Non-Dot policies.*
- (5) *Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in the Non-DOT Drug and Alcohol policy.*
- (6) A voluntary Referral does not shield an employee from disciplinary action or guarantee employment with the City.
- (7) A voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.
- (9) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall be subject to termination.

**R. GRIEVANCE AND APPEAL**

The consequences specified by 49 CFR Part 655 for a positive test or test refusal are not subject to arbitration.

**S. PROPER APPLICATION OF THE POLICY**

The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

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**T. INFORMATION DISCLOSURE**

Drug and alcohol testing records shall be maintained by the City's Drug and Alcohol Administrator, Program Manager and Designated Employer Representative, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

- (1) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP referrals and follow-up testing plans.
- (2) Records of a verified positive drug and alcohol test result shall be released to the Drug and Alcohol Program Administrator, Drug and Alcohol Program Manager, Designated Employer Representative, and Department Supervisor on a need to know basis.
- (3) Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- (4) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the preceding. The information will only be released with binding stipulation from the decision maker will make it available only to parties in the preceding.
- (5) Records will be release to the National Transportation Safety Board during an accident investigation.
- (6) Records will be release to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- (7) Records will be released if request by a Federal, state or local safety agency with regulatory authority over the City or the employee.
- (8) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended necessary legal steps to contest the issuance of the order will be taken.

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- (9) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

**U. RECORD KEEPING**

Each individual's record of testing and results under this policy will be maintained private and confidential.

The **City** will keep the following records for the periods specified. The person responsible for maintaining the records kept within the **City** will be maintained in locked containers or in a secure location by the Program Administrator.

- (1) Records that demonstrate the collection process conforms to 49 CFR will be kept for two years.
- (2) Records of employee drug and alcohol test results that show employees who failed or refused a drug and/or alcohol test, and the type of test failed, if any, will be kept for a minimum of 5 years, and include the following information:
  - (a) The functions performed by each employee who fails the drug test.
  - (b) The prohibited drugs which were used by each employee who fails the drug test.
  - (c) The disposition of each employee who fails the drug test (e.g. termination, rehabilitation, leave without pay, etc.).
  - (d) Documentation that supports the MRO's determinations.
  - (e) Records that demonstrate rehabilitation will also include the MRO's determination.
- (3) Records of employee drug and alcohol test results that show employees passed the test will be kept for a minimum of one year.
- (4) A record of the number of employees tested by type of test will be kept for a minimum of 5 years.

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- (5) Records confirming that supervisors and employees have been trained as required by this policy will be kept for a minimum of 2 years. Training records will include copies of all training materials. These records will be maintained by the **City** Program Administrator.
- (6) Calibration documentation of evidentiary breath testing devices will be kept for a minimum of 5 years.
- (7) SAP evaluations and referrals of employees for drug abuse and/or alcohol misuse will be kept for a minimum of 5 years at Continuum Employee Assistance.
- (8) Employee compliance with recommendations of the SAP for drug use and/or alcohol misuse, including results of return to duty and follow-up testing will be kept for 5 years.
- (9) MIS Reports will be kept for 5 years.

**V. QUALITY ASSURANCE MONITORING PLAN**

- (1) Third Party Administrator:  
The City of Lincoln will perform a site visit to third party administrator once every two years, to monitor compliance with the drug and alcohol program requirements.
- (2) Contractors:  
The City of Lincoln will maintain a copy of all contractors drug and alcohol program policies and will annually meet with all contractors to monitor compliance with the drug and alcohol program requirements.

**W. SPECIMEN COLLECTION PROCEDURES**

The collection site will provide:

- An enclosure for urinating in private.
- A toilet or receptacle large enough to contain a complete void.
- A source for washing hands.
- A suitable surface for writing.

A Federal drug testing custody and control form will be used for collection and a split sample taken.

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The collection site will be secure to prevent unauthorized access during the collection process. The specimen will be kept in sight of the donor and collection site person until sealed and ready for shipment. Employees are required to have individual privacy when providing a specimen except when:

- (1) The employee presents a specimen that is outside the accepted temperature range.
- (2) The collector observes the employee attempting to adulterate or substitute the specimen or detects an obvious smell, color, or any obvious form of adulteration.
- (3) The employee previously had a verified positive.

Specific procedures will be followed during collection of the specimen, including:

- (1) Positive ID of the donor.
- (2) Removal of outer garments only (coat jackets) - employees will not be required to undress or wear a hospital or other examination gown.
- (3) Wash hands prior to collection of specimen.
- (4) Water sources in the collection site enclosure must be secured.
- (5) Bluing agent must be added to the toilet tank and bowl.
- (6) Select, or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either you or the employee, with both of you present, must unwrap or break the seal of the collection container. You must not unwrap or break the seal on any specimen bottle at this time.
- (7) Collector remains outside the enclosure.
- (8) Donor may flush toilet only after releasing specimen to collector.
- (9) The specimen should contain at least 45ml of urine.



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Upon receiving the specimen from the individual, the collection site person shall determine if it contains at least 45 milliliters of urine to be split in two containers, one with 30ml and one with 15ml. If the individual is unable to provide 45 milliliters of urine, the collection site person shall direct the individual to drink not more than 40 ounces of fluids for up to three hours and again attempt to provide a complete sample using a fresh specimen bottle. The original specimen shall be discarded.

If the employee cannot provide a complete sample within the up to 3-hour period, then the employer's MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen. Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing.

The collector must measure the temperature of the specimen within four minutes after collection, and inspect the specimen for color and unusual signs of contamination.

Collector and donor must complete the collection process together, including:

- (1) Sealing and labeling of the specimen bottle.
- (2) Donor initialing the bottle label or seal.
- (3) Signing and dating of a DOT custody and control form. The inadvertent use of a non-DOT Drug Test custody and control form will not invalidate the process if the Medical Review Officer determines that the form meets the chain of custody requirements.

Collector must prepare specimens for shipment. The chain-of-custody form is sealed with the specimen bottle in a tamper evident bag when shipped to the laboratory. A split specimen is obtained when urine from a single void is divided into two bottles. The first or primary specimen must contain at least 30ml of urine; the second or split specimen contains the remainder of urine up to 15ml. All procedures and documentation must be carried out for the split specimen.

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In the event that primary specimen is verified as positive, the safety sensitive employee will be notified by the City's MRO of the positive test and given the option to have the second bottle sent to a different DHHS approved laboratory for analysis. To exercise this option, the safety sensitive employee must advise the City's MRO within 72 hours of being told that the primary specimen was a confirmed positive. The employee will be required to submit a check to the appropriate City representative for the cost of the test to pay for the split retest. Pending the outcome of the additional analysis, the safety sensitive employee is considered to have tested positive to a DOT drug test. The split specimen, if tested, is only tested by GC/MS to confirm the presence of the drug(s) found in the primary specimen.

Except for the use of *methadone and medications containing alcohol*, nothing in this policy prohibits a safety sensitive employee's use of a medication legally prescribed by a licensed physician: (i) who is familiar with the safety sensitive employee's medical history and specific safety-sensitive duties, and (ii) who has advised the safety sensitive employee that the prescribed medication will not adversely affect the safety sensitive employee's ability to operate a motor vehicle safely. Medications prescribed for someone other than the safety sensitive employee, however, will not be considered lawfully used when taken by the safety sensitive employee under any circumstances.

Before being tested for drugs, safety sensitive employees may list on their copy of the chain-of-custody form, any prescription and non-prescription medications being lawfully used by that safety sensitive employee at that time. This list will remind the safety sensitive employee of any medications being taken at the time of the collection, in the event of an MRO interview. A "positive" drug test may be declared "negative" by the City's MRO, if the safety sensitive employee can provide the MRO with clear and convincing evidence that the drug that was used was prescribed by a licensed physician. The determination of this will be made by the City's MRO.

Split specimens will be tested for adulterants any time the split specimen test is unable to reconfirm the positive result from the primary specimen's analysis. If adulterants are found in either specimen, the information must be documented on the Federal Custody and Control Form and reported as a "Refusal to Test" to the employer. If no adulterant is found in the split, and the second laboratory is unable to reconfirm the presence of the drug/metabolite in the split specimen, both the primary and the split tests must be canceled. If the split sample is clearly negative for the five drugs being tested, the employee will be reimbursed for the cost of the tests.

**X. MEDICAL REVIEW OFFICER (MRO)**

The MRO for the City is a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

According to the DOT regulations the following is a list of the MRO's specific responsibilities:

- Receive negative and positive confirmed results from the laboratory.
- Request, if needed, a quantitative description of test results.
- Receives a certified copy of the original chain of custody.
- Review and interpret positive test results.
- Inform the tested individual and provide test results.
- Conduct a medical interview with the tested individual.
- Review the individual's medical history, or any other relevant biomedical factors.
- Give the individual an opportunity to discuss test results, to determine if there is a legitimate medical reason for a confirmed positive test result.
- If necessary, order a re-analysis of the original sample in a certified laboratory.
- Consult with others if questions of accuracy arise.
- Consult with laboratory officials.
- Reject urinalysis results that do not comply with the mandatory guidelines.
- Report presence of an adulterant in a primary specimen immediately to the employer, not the employee. The identification of an adulterant in the primary specimen constitutes a test refusal.

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- You must verify a confirmed positive test result for opiates only if you determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (i.e. morphine, heroin, or co-dine).
- Determine whether a result is scientifically sufficient, if not, the test is concluded as a negative for that employee.
- Determine whether a result is consistent with legal drug use.
- Forward results of verified positive tests to the **City**
- If there is no legitimate medical reason for a confirmed positive test, the MRO reports the test as positive to the designated employee representative.
- As an employee, when the Medical Review Officer has notified you that you have a verified positive drug test or refusal to test because of adulteration or substitution, you have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. The expense for this test is solely the responsibility of the employee, unless the test is negative. At that time, the **City** will reimburse the employee for their expenses incurred in this test. The **City** may seek payment or reimbursement of all or part of the cost of the split specimen from the employee.
- Advise the **City** of any employee taking a drug or medication, whether or not prescribed by a physician, which may adversely affect the employee's ability to perform work in a safe or productive manner. The employee's department head after considering medical recommendations then will determine whether the employee can remain at work and whether any work restrictions will be necessary.

If the MRO is unable to contact the employee to confirm a positive test result, the MRO will take the following steps.

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- If after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact either the plan administrator (designated management official and/or designee of the **City**) who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated management official, the designated management official shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee contact the MRO is held in confidence.
- If, after making all reasonable efforts, the designated management official is unable to contact the employee, the **City** may place the employee on leave without pay.
- The MRO may communicate a verification to the Plan Administrator of a test as positive without having communicated directly with the employee about the test, in four circumstances:
  - (1) The employee expressly declines the opportunity to discuss the test;
  - (2) The designated employer representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO and more than 72 hours have passed since the time the designated employee representative contacted the employee;
  - (3) If neither the MRO or designated employee representative, after making and documenting all reasonable efforts, has been unable to contact the employee within 10 days of the date on which the MRO receives the laboratory result; or
  - (4) Other circumstances provided for in DOT agency drug testing regulations.

If a test is verified positive under the circumstances specified above, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidable, prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate medical explanation for the confirmed positive test result. If the MRO concludes that there is a legitimate medical explanation, the MRO declares the test to be negative.

## APPENDIX I

### LIST OF COVERED POSITIONS

## Appendix I

### List of Covered Positions

Within the following Job Classifications certain positions require possession of a Commercial Driver's License. For purposes of this Policy and the City's drug and alcohol testing program, performing a "safety-sensitive function" means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

- (1) Operation of a transit revenue service vehicle even when the vehicle is not in revenue service;
- (2) Operating of a non-revenue service vehicle, by an employee when the operation of such a vehicle requires the driver to hold a Commercial Driver's License (CDL);
- (3) Controlling dispatch or movement of a revenue service vehicle;
- (4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. unless the recipient receives section 5311 funding and contracts out such services;
- (5) Carrying a firearm for security purposes.

The City reserves the right to amend the list of positions covered by this policy and the supervisory positions required to attend training without redrafting the entire policy.

#### Public Works and Utilities, Transportation Division, StarTran Section

Bus Apprentice Mechanic  
Bus Cleaner  
Bus Journey Mechanic  
Bus Maintenance Superintendent  
Bus Operations Superintendent  
Bus Operator  
Bus Service Worker  
Garage Supervisor  
StarTran Field Supervisor  
StarTran Handi-Van Supervisor  
Transit Manager

#### Mayor's Department, Aging Division, Handyman Services Section

Entry Level Worker

## APPENDIX II

### LIST OF SUPERVISORS



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*Drug/Alcohol Testing Program Policy*

Appendix II

List of Supervisory Positions  
Drug and Alcohol Testing Training

Public Works and Utilities, Transportation Division, StarTran  
Section

- Transit Manager
- Bus Maintenance Superintendent
- Bus Operations Superintendent
- Garage Supervisor
- StarTran Field Supervisor
- StarTran Handi-Van Supervisor

Mayor's Department, Aging Division, Handyman Services Section

- Program Supervisor
- Maintenance Supervisor

## APPENDIX III

### FACT SHEETS ON DRUGS AND ALCOHOL

## **Alcohol Fact Sheet**

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

### **Signs and Symptoms of Use**

- Dulled mental processes
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction rate
- Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

### **Health Effects**

The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6 ounce glass] over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed "alcoholic")
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related).

### **Social Issues**

- Two-thirds of all homicides are committed by people who drink prior to the crime.
- Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
- Forty percent of family court cases are alcohol problem related.

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- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
- More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

**The Annual Toll**

- 24,000 people will die on the highway due to the legally impaired driver.
- 12,000 more will die on the highway due to the alcohol-affected driver.
- 15,800 will die in non-highway accidents.
- 30,000 will die due to alcohol-caused liver disease.
- 10,000 will die due to alcohol-induced brain disease or suicide.
- Up to another 125,000 will die due to alcohol-related conditions or accidents.

**Workplace Issues**

- It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
- A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.

## **Amphetamine Fact Sheet**

Amphetamines are central nervous system stimulants that speed up the mind and body. The physical sense of energy at lower doses and the mental exhilaration at higher doses are the reasons for their abuse. Although widely prescribed at one time for weight reduction and mood elevation, the legal use of amphetamines is now limited to a very narrow range of medical conditions. Most amphetamines that are abused are illegally manufactured in foreign countries and smuggled into the U.S. or clandestinely manufactured in crude laboratories.

### **Description**

- Amphetamine is sold in counterfeit capsules or as white, flat, double-scored "mini-bennies." It is usually taken by mouth.
- Methamphetamine is often sold as a creamy white and granular powder or in lumps and is packaged in aluminum foil wraps or sealable plastic bags. Methamphetamine may be taken orally, injected, or snorted into the nose.
- Trade/street names include Biphedamine, Delcobese, Desotyn, Detedrine, Chetrol, Ritalin, Speed, Meth, Crank, Crystal, Monster, Black Beauties, and Rits.

### **Signs and Symptoms of Use**

- Hyperexcitability, restlessness
- Dilated pupils
- Increased heart rate and blood pressure
- Heart palpitations and irregular beats
- Profuse sweating
- Rapid respiration
- Confusion
- Panic
- Talkativeness
- Inability to concentrate
- Heightened aggressive behavior.

### **Health Effects**

- Regular use produces strong psychological dependence and increasing tolerance to drug.
- High doses may cause toxic psychosis resembling schizophrenia.
- Intoxication may induce a heart attack or stroke due to spiking of blood pressure.
- Chronic use may cause heart and brain damage due to severe constriction of capillary blood vessels.

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- The euphoric stimulation increases impulsive and risk-taking behaviors, including bizarre and violent acts.
- Withdrawal from the drug may result in severe physical and mental depression.

**Workplace Issues**

- Since amphetamines alleviate the sensation of fatigue, they may be abused to increase alertness because of unusual overtime demands or failure to get rest.
- Low-dose amphetamine use will cause a short-term improvement in mental and physical functioning. With greater use or increasing fatigue, the effect reverses and has an impairing effect. Hangover effect is characterized by physical fatigue and depression, which may make operation of equipment or vehicles dangerous.

## **Cocaine Fact Sheet**

Cocaine is used medically as a local anesthetic. It is abused as a powerful physical and mental stimulant. The entire central nervous system is energized. Muscles are more tense, the heart beats faster and stronger, and the body burns more energy. The brain experiences an exhilaration caused by a large release of neurohormones associated with mood elevation.

### **Description**

- The source of cocaine is the coca bush, grown almost exclusively in the mountainous regions of northern South America.
- Cocaine Hydrochloride — "snorting coke" is a white to creamy granular or lumpy powder that is chopped into a fine powder before use. It is snorted into the nose, rubbed on the gums, or injected in veins. The effect is felt within minutes and lasts 40 to 50 minutes per "line" (about 60 to 90 milligrams). Common paraphernalia includes a "crack pipe" (a small glass smoking device for vaporizing the crack crystal) and a lighter, alcohol lamp, or small butane torch for heating.
- Trade/street names include Coke, Rock, Crack, Free Base, Flake, Snow, Smoke, and Blow.

### **Signs and Symptoms of Use**

- Financial problems
- Frequent and extended absences from meetings or work assignment
- Increased physical activity and fatigue
- Isolation and withdrawal from friends and normal activities
- Secretive behaviors, frequent nonbusiness visitors, delivered packages, phone calls
- Unusual defensiveness, anxiety, agitation
- Wide mood swings
- Runny or irritated nose
- Difficulty in concentration
- Dilated pupils and visual impairment
- Restlessness
- Formication (sensation of bugs crawling on skin)
- High blood pressure, heart palpitations, and irregular rhythm
- Hallucinations
- Hyperexcitability and overreaction to stimulus
- Insomnia
- Paranoia and hallucinations
- Profuse sweating and dry mouth
- Talkativeness.

### **Health Effects**

- Research suggests that regular cocaine use may upset the chemical balance of the brain. As a result, it may speed up the aging process by causing irreparable damage to critical nerve cells. The onset of nervous system illnesses such as Parkinson's disease could also occur.

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- Cocaine use causes the heart to beat faster and harder and rapidly increases blood pressure. In addition, cocaine causes spasms of blood vessels in the brain and heart. Both effects lead to ruptured vessels causing strokes or heart attacks.
- Strong psychological dependency can occur with one "hit" of crack. Usually, mental dependency occurs within days (crack) or within several months (snorting coke). Cocaine causes the strongest mental dependency of any known drug.
- Treatment success rates are lower than for other chemical dependencies.
- Cocaine is extremely dangerous when taken with depressant drugs. Death due to overdose is rapid. The fatal effects of an overdose are not usually reversible by medical intervention. The number of cocaine overdose deaths has tripled in the last four years.
- Cocaine overdose was the second most common drug emergency in 1986 — up from 11th place in 1980.

**Workplace Issues**

- Extreme mood and energy swings create instability. Sudden noises can cause a violent reaction.
- Lapses in attention and ignoring warning signals greatly increase the potential for accidents.
- The high cost of cocaine frequently leads to workplace theft and/or dealing.
- A developing paranoia and withdrawal create unpredictable and sometimes violent behavior.
- Work performance is characterized by forgetfulness, absenteeism, tardiness, and missed assignments.



## **Cannabinoids (Marijuana) Fact Sheet**

Marijuana is one of the most misunderstood and underestimated drugs of abuse. People use marijuana for the mildly tranquilizing and mood- and perception-altering effects it produces.

### **Description**

- Usually sold in plastic sandwich bags, leaf marijuana will range in color from green to light tan. The leaves are usually dry and broken into small pieces. The seeds are oval with one slightly pointed end. Less prevalent, hashish is a compressed, sometimes tarlike substance ranging in color from pale yellow to black. It is usually sold in small chunks wrapped in aluminum foil. It may also be sold in an oily liquid.
- Marijuana has a distinctly pungent aroma resembling a combination of sweet alfalfa and incense.
- Cigarette papers, roach clip holders, and small pipes made of bone, brass, or glass are commonly found. Smoking "bongs" (large bore pipes for inhaling large volumes of smoke) can easily be made from soft drink cans and toilet paper rolls.
- Trade/street names include Marinol, THC, Pot, Grass, Joint, Reefer, Acapulco Gold, Sinsemilla, Thai Sticks, Hash, and Hash Oil.

### **Signs and Symptoms of Use**

- Reddened eyes (often masked by eyedrops)
- Slowed speech
- Distinctive odor on clothing
- Lackadaisical "I don't care" attitude
- Chronic fatigue and lack of motivation
- Irritating cough, chronic sore throat.

### **Health Effects**

#### **General**

- When marijuana is smoked, it is irritating to the lungs. Chronic smoking causes emphysema-like conditions.
- One joint causes the heart to race and be overworked. People with undiagnosed heart conditions are at risk.
- Marijuana is commonly contaminated with the fungus *Aspergillus*, which can cause serious respiratory tract and sinus infections.
- Marijuana smoking lowers the body's immune system response, making users more susceptible to infection. The U.S. government is actively researching a possible connection between marijuana smoking and the activation of AIDS in positive human immunodeficiency virus (HIV) carriers.

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Pregnancy Problems and Birth Defects

- The active chemical, tetrahydrocannabinol (THC), and 60 other related chemicals in marijuana concentrate in the ovaries and testes.
- Chronic smoking of marijuana in males causes a decrease in sex hormone, testosterone, and an increase in estrogen, the female sex hormone. The result is a decrease in sperm count, which can lead to temporary sterility. Occasionally, the onset of female sex characteristics including breast development occurs in heavy users.
- Chronic smoking of marijuana in females causes a decrease in fertility and an increase in testosterone.
- Pregnant women who are chronic marijuana smokers have a higher than normal incidence of stillborn births, early termination of pregnancy, and higher infant mortality rate during the first few days of life.
- In test animals, THC causes birth defects, including malformations of the brain, spinal cord, forelimbs, and liver and water on the brain and spine.
- Offspring of test animals who were exposed to marijuana have fewer chromosomes than normal, causing gross birth defects or death of the fetus. Pediatricians and surgeons are concluding that the use of marijuana by either or both parents, especially during pregnancy, leads to specific birth defects of the infant's feet and hands.
- One of the most common effects of prenatal cannabinoid exposure is underweight newborn babies.
- Fetal exposure may decrease visual functioning and causes other ophthalmic problems.

Mental Function

Regular use can cause the following effects:

- Delayed decision-making
- Diminished concentration
- Impaired short-term memory, interfering with learning
- Impaired signal detection (ability to detect a brief flash of light), a risk for users who are operating machinery
- Impaired tracking (the ability to follow a moving object with the eyes) and visual distance measurements
- Erratic cognitive function
- Distortions in time estimation
- Long-term negative effects on mental function known as "acute brain syndrome," which is characterized by disorders in memory, cognitive function, sleep patterns, and physical condition.

Acute Effects

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- Aggressive urges
- Anxiety
- Confusion
- Fearfulness
- Hallucinations
- Heavy sedation
- Immobility
- Mental dependency
- Panic
- Paranoid reaction
- Unpleasant distortions in body image.

**Workplace Issues**

- The active chemical, THC, stores in body fat and slowly releases over time. Marijuana smoking has a long-term effect on performance.
- A 500 to 800 percent increase in THC concentration in the past several years makes smoking three to five joints a week today equivalent to 15 to 40 joints a week in 1978.
- Combining alcohol or other depressant drugs and marijuana can produce a multiplied effect, increasing the impairing effect of both the depressant and marijuana.

## **Opiates (Narcotics) Fact Sheet**

Opiates (also called narcotics) are drugs that alleviate pain, depress body functions and reactions, and, when taken in large doses, cause a strong euphoric feeling.

### **Description**

- Natural and natural derivatives — opium, morphine, codeine, and heroin
- Synthetics — meperidine (Demerol), oxymorphone (Numorphan), and oxycodone (Percodan)
- May be taken in pill form, smoked, or injected, depending upon the type of narcotic used.
- Trade/street names include Smack, Horse, Emma, Big D, Dollies, Juice, Syrup, and China White.

### **Signs and Symptoms of Use**

- Mood changes
- Impaired mental functioning and alertness
- Constricted pupils
- Depression and apathy
- Impaired coordination
- Physical fatigue and drowsiness
- Nausea, vomiting, and constipation
- Impaired respiration.

### **Health Effects**

- IV needle users have a high risk for contracting hepatitis and AIDS due to the sharing of needles.
- Narcotics increase pain tolerance. As a result, people could more severely injure themselves or fail to seek medical attention after an accident due to lack of pain sensitivity.
- Narcotics' effects are multiplied when used in combination with other depressant drugs and alcohol, causing increased risk for an overdose.

### **Social Issues**

- There are over 500,000 heroin addicts in the U.S., most of whom are IV needle users.
- An even greater number of medicinal narcotic-dependent persons obtain their narcotics through prescriptions.

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- Because of tolerance, there is an ever-increasing need for more narcotic to produce the same effect.
- Strong mental and physical dependency occurs.
- The combination of tolerance and dependency creates an increasing financial burden for the user. Costs for heroin can reach hundreds of dollars a day.

**Workplace Issues**

- Unwanted side effects such as nausea, vomiting, dizziness, mental clouding, and drowsiness place the legitimate user and abuser at higher risk for an accident.
- Narcotics have a legitimate medical use in alleviating pain. Workplace use may cause impairment of physical and mental functions.

## **Phencyclidine (PCP) Fact Sheet**

Phencyclidine (PCP) was originally developed as an anesthetic, but the adverse side effects prevented its use except as a large animal tranquilizer. Phencyclidine acts as both a depressant and a hallucinogen, and sometimes as a stimulant. It is abused primarily for its variety of mood-altering effects. Low doses produce sedation and euphoric mood changes. The mood can change rapidly from sedation to excitation and agitation. Larger doses may produce a coma-like condition with muscle rigidity and a blank stare with the eyelids half closed. Sudden noises or physical shocks may cause a "freak out" in which the person has abnormal strength, extremely violent behavior, and an inability to speak or comprehend communication.

### **Description**

- PCP is sold as a creamy, granular powder and is often packaged in one-inch square aluminum foil or folded paper "packets."
- It may be mixed with marijuana or tobacco and smoked. It is sometimes combined with procaine, a local anesthetic, and sold as imitation cocaine.
- Trade/street names include Angel Dust, Dust, and Hog.

### **Signs and Symptoms of Use**

- Impaired coordination
- Severe confusion and agitation
- Extreme mood shifts
- Muscle rigidity
- Nystagmus (jerky eye movements)
- Dilated pupils
- Profuse sweating
- Rapid heart beat
- Dizziness.

### **Health Effects**

- The potential for accidents and overdose emergencies is high due to the extreme mental effects combined with the anesthetic effect on the body.
- PCP is potentiated by other depressant drugs, including alcohol, increasing the likelihood of an overdose reaction.
- Misdiagnosing the hallucinations as LSD induced, and then treating with Thorazine, can cause a fatal reaction.
- Use can cause irreversible memory loss, personality changes, and thought disorders.

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- There are four phases to PCP abuse. The first phase is acute toxicity. It can last up to three days and can include combativeness, catatonia, convulsions, and coma. Distortions of size, shape, and distance perception are common. The second phase, which does not always follow the first, is a toxic psychosis. Users may experience visual and auditory delusions, paranoia, and agitation. The third phase is a drug-induced schizophrenia that may last a month or longer. The fourth phase is PCP-induced depression. Suicidal tendencies and mental dysfunction can last for months.

**Workplace Issues**

- PCP abuse is less common today than in recent years. It is also not generally used in a workplace setting because of the severe disorientation that occurs.

## APPENDIX IV

### PROGRAM RESOURCES



***Federal Transit Authority (FTA)  
Drug/Alcohol Testing Program Policy***

**Appendix IV**

City of Lincoln  
Drug and Alcohol Program Resources  
Effective August 2005

| Title/Provider  |  | Name/Address/Phone  |   |
|---|--|---|---|
| Program Administrator   |  | Director of Personnel<br>wk (402) 441-7888  |   |
| Program Manager   |  | Personnel Coordinator<br>wk (402) 441-7880    hm (402) 464-9649                         |   |
| Designated Employer Representative  |  | Douglas Thorpe<br>wk (402) 441-7531    hm (402) 420-2806                                |   |
| Drug and Alcohol Collection Service   |  |   |   |
|   | CONCENTRA Medical Center<br>4900 North 26 <sup>th</sup> Street, Suite 104<br>Lincoln, NE 68521<br>(402) 465-0010 | (Breath Alcohol/Drug)   | <u>Hours</u><br>M-F excluding holidays<br>8:00am - 5:00pm<br><b>(For after hours call and listen to answering machine for details.)</b> |
|   | Company Care West<br>1000 West “O” Street<br>Lincoln, NE 68528<br>(402) 475-6656                                 | (Breath Alcohol/Drug)   | 7 days/week<br>M-F excluding holidays<br>7:00am - 5:00pm  |
| Drug and Alcohol Counseling Services<br>and<br>Substance Abuse Professional (SAP) |  | Continuum<br>1135 M Street, Suite 400<br>Lincoln, NE 68508<br>(402) 476-0186            |   |
| Medical Review Officers   |  | Western Pathology Consultants<br>P.O. Box 1936<br>Scottsbluff, NE 69363<br>800-682-5176 |   |
| Testing Laboratory  |  | LabOne<br>Lenexa, Kansas  |   |

## APPENDIX V

## AGREEMENT

## Appendix V

### Agreement

A.T.U. #1293 and the City of Lincoln agree that the Drug and Alcohol testing policy attached hereto shall be effective September 1, 2004 and shall remain in effect thereafter unless either party notifies the other in writing that it desires to modify this agreement. The Policy and Agreement will remain in full force and effect during the period of negotiations.

Both parties acknowledge that the City has the responsibility to amend this policy for those practices mandated by the Federal Department of Transportation, without negotiations.

**IN WITNESS WHEREOF**, the parties hereto have set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF LINCOLN, NEBRASKA  
a municipal corporation,

LOCAL 1293 OF THE  
AMALGAMATED TRANSIT UNION

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
President, Local 1293

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Financial Secretary